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Atty. Doc. No.: D02728

REMARKS

In the Office Action mailed on December 27, 2005, the Examiner rejected claims 1-11, 13-25, 27-29, 31-33, 35 and 36 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,708,963 to Mobley et al. in view of U.S. Patent 5,173,589 to Diehl et al. and rejected claims 12, 26, 30 and 34 under 35 U.S.C. 103(a) as being unpatentable over Mobley et al. and Diehl et al. and further in view of U.S. Patent Publication No. 2002/0112241 A1 to Cocchi et al.

In response, Applicant has amended claims 1, 2, 4-16 and 18-28 and cancelled claims 3, 17 and 39-36. No new matter has been added.

The combination of Mobley et al. and Diehl et al. is improper because the two described systems operate differently and are therefore not compatible. Mobley et al. teach retrieving conditional access data from each user on a periodic basis such as once per month. See column 10, lines 31-40. Diehl et al. teach ordering merchandise instantaneously. See column 3, lines 28-29. The Examiner has failed to propose how the systems of Mobley et al. and Diehl et al. can be combined when they are operating under different time constraints. If the Examiner proposes to adopt the once-per-month timing scheme of Mobley et al. in the proposed combination, the purpose of Diehl et al. to allow instantaneous ordering is lost. If the Examiner proposes to adopt the instantaneous timing scheme of Diehl et al. for the proposed combination, all of the receiver decoders 2a-2n in all possible groups will have to substantially continuously send conditional access data to LEO satellite. In this proposed combination, Mobley et al. will be continuously processing data from all receiver decoders 2a-2n. Not only is this a substantial processing burden not contemplated by Mobley et al., it also defeats the

purpose of Mobley et al. to divide the receiver decoders 2a-2n into groups. See column 9, lines 22-28. Regardless of which timing scheme is adopted in the proposed combination, a purpose of either Mobley et al. or Diehl et al. will be destroyed.

Claims 1 and 15 have been amended to further describe how the updated IPPV data is generated. The updated IPPV data is based upon the current IPPV data. The current IPPV data is either stored in the smart card or memory of the terminal. The Examiner equates the "ID" and "D" data described in column 2, lines 45-52 of Diehl et al. with the updated IPPV value claimed in claim 1. The "ID" and "D" data of Diehl et al. describe the article being sold (e.g., price, size, color etc.) and the date, respectively. This data is generic to all users and is not based upon a current value stored in a smart card or terminal.

Claims 5 and 19 are distinguishable over the combination of Mobley et al. and Diehl et al. because the disabling of IPPV capabilities relates to the receiving of updated IPPV data by the terminal in claims 5 and 19. In contrast, Mobley et al. disable conditional access programming to prevent piracy as disclosed in column 11, lines 15-18 and column 16, lines 45-52 cited by the Examiner. To prevent piracy, Mobley et al. teach periodically transmitting a secret number from the decoders 2a-2n in column 11, lines 11-15. This is a time-based system and is not based on any IPPV data value. Similarly, Mobley et al. describe terminal security by denying service if no proper or an incomplete secure data are not received. Again, this part of Mobley et al. denies a user a service only if the message isn't received. The message is not related to an IPPV data value as claimed in claims 5 and 19.

Claims 6 and 20 are distinguishable over the proposed combination of Mobley et al. and Diehl et al. because neither Mobley et al. nor Diehl et al. teach or suggest allowing or disallowing an IPPV purchase. Mobley et al. presumably always allow the purchase of a conditional access program. This is supported by the fact that the amount of conditional access programming is only tallied once a month in Mobley et al.'s system. See column 10, lines 28-43. Mobley et al. simply credit the buyer with conditional access programs and bill him or her at the end of the month. There is no denial of service described in Mobley et al. that relates to the IPPV purchase amount.

Claims 7, 13, 21 are also distinguishable from the proposed combination of Mobley et al. and Diehl et al. Mobley et al.'s flag 801 merely indicates that the memory is full in the decoder 2a-2n. See column 16, lines 23-29. This flag is not the same as an IPPV value nor a purchase report. In addition, the smart card 5 of Diehl et al. is a separate entity from the receiver 3. Assuming IPPV data or a purchase report were stored in Diehl et al.'s card 5, this data is not transferred to a separate memory within receiver 3 as claimed in claims 7, 13, 21.

Claims 8 and 22 are distinguishable from the proposed combination of Mobley et al. and Diehl et al. because neither discuss a "prior smart card" as claimed in claims 8 and 22. Mobley et al. do not discuss smart cards at all so it cannot teach nor describe a "prior smart card." Diehl et al. only teach or suggest processing data on the current smart card associated with the receiver. If data is to be processed at a later date in Diehl et al., it is done via mail, phone or view data system that does not interface with a headend as claimed.

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CONCLUSION

No additional fees are due. However, the Office is authorized to charge any additional fees or underpayments of fees (including fees for petitions for extensions of time) under 37 C.F.R. 1.16 and 1.17 to account number 502117. Any overpayments should be credited to the same account.

Applicant respectfully requests reconsideration of the present application, withdrawal of the rejections made in the last Office Action and the issuance of a Notice of Allowance. The Applicant's representative can be reached at the below telephone number if the Examiner has any questions.

Respectfully submitted,

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